

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2159 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

JAGDISHKUMAR SHANKERLAL PATEL

Versus

CHHOTUBHAI KAMUBHAI QURESHI

Appearance:

MR A.J. Desai for Appellant
UNSERVED AS EXPIRED for Respondent No. 1
MR SH SANJANWALA for Respondent No. 2
MR SANDIP C SHAH for Respondent No. 3

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 18/11/97

ORAL JUDGEMENT

1. Admit. Respondent No.1 is ordered to be deleted as he is reported dead and endorsement to that effect is made. Mr.S.H.Sanjawala appears for Respondent No.2 and Mr. Sandip C. Shah appears for Respondent No. 3. It appears that the present appellant was the claimant who is aggrieved by the judgment and award dated 18th

February, 1983 passed by the Motor Accident Claims Tribunal (Auxiliary) at Ahmedabad, whereby the Tribunal has dismissed the petition of the claimant.

2. From the judgment and award of the Tribunal it appears that the vehicular accident took place in which who was then aged about 23 years received injuries and claimed the amount of Rs.95,000/-. According to the claimant, he was the partner in a partnership firm and was earning Rs. 900/- per month at the time of the accident. On 29th January, 1981, at about 1.15 p.m., he was proceeding on his scooter from Naranpura Railway crossing towards Usmanpura Colony from North to South. According to him, he was driving his scooter on the correct side of the road at a slow and reasonable speed. When his scooter reached near Sevagram Society Cross Road, the motor truck belonging to Second Respondent and it was driven by the first respondent who is reported dead bearing No.GTD 5329 came from the side of Champaner society i.e. from east to west and the same was being driven at excessive speed rashly and negligently and even though the claimant was at the intersection, the said vehicle dashed with the scooter of the claimant and thereby he received several injuries. The claimant was injured on his thigh and intestine and abdomen were also injured and he sustained compound fractures of pelvis bone. He was admitted to Vadilal Sarabhai Hospital and was treated as indoor patient for one month and operation was performed on him. Thereafter, he was once again admitted in the hospital as indoor patient and one another operation was performed on him. The claimant thus had to remain in hospital or in bed for about four months and he has to take the constant service of one attendant. For all these period he had suffered severe unbearable pain. He has also to spend very huge amount towards medicine, special diet and conveyance and he has sustained permanent partial disability. He could not sit continuously for long period and he was unable to sit cross leg or unable to lift weight. This has affected his earning capacity and he has therefore claimed the compensation of Rs.95,000/-. The fact that the opponent No.1 was driving the vehicle is not disputed and that the same same belonged to second opponent is also not disputed. The third opponent is the Insurance Company. The Insurance Company has filed its reply at Exhibit 19 and has denied the liability and has stated that the vehicle in question was not being driven rashly and negligently.

3. On the aforesaid pleadings, the Tribunal framed the issues or the points for determination at Exhibit 27

and as regards the occurrence of accident, it recorded the finding that vehicular accident did take place. As regards issue No.2 as to whether the claimant was injured because the truck in question was being driven rashly and negligently, the Tribunal answered the question in negative and on issue No.3, the Tribunal recorded the finding that it was the scooterist, namely, the claimant, who drove the vehicle rashly and negligently and the truck was being driven at a reasonable speed and the accident occurred because of contributory negligence of the claimant. On the question as to whether the claimant was entitled to claim any amount from the Insurance Company and the owner of the vehicle, the Tribunal answered the question in the negative holding that there was no liability of the driver of the vehicle i.e. the truck belonging to Abad Dairy. However, in case, the finding of the Tribunal that accident occurred because of the sole negligence of the scooterist, namely, the claimant was not found to be correct, the Tribunal awarded the amount of Rs. 35,000/-.

4. In this connection the approach of the Tribunal is required to be stated in its own words extensively which in my opinion is based upon conjectures, surmises and lot of guess work and is not sustainable in law. The finding which the Tribunal has recorded that it was the contributory negligence of the scooterist which led to the vehicular accident, as is found in reply to the issue No.3, there is implied admission in the finding itself that there was negligence on the part of the driver of the truck and that the scooterist has by its own negligence contributed to the accident. In that case, it becomes a case of contributory negligence and what is extent of the negligence of the scooterist and of the driver of the truck is required to be apportioned. The Tribunal has, in fact, while recording the finding on issues stated that the truck was involved in the vehicular accident and by a reference to the panchnama and the width of the road and the placement of the scooter and the truck at the relevant time, it has reached the finding, which in my opinion, is not sustainable in law. In this connection, Sandip C. Shah has invited my attention to the observations made by the Tribunal which are quoted extensively hereunder.

"Now according to the panchnama, the road on which "Now according to the panchnama, the road on which the petitioner was going runs from North to south and road from which the motor truck was coming runs from east to west. The width of the north south road is 44' now as per the panchnama

blood had spilled on the road in circumference of about 1' at the place of the accident. An electrical pole No. 224 standing on the corner of the sevagram society was at the distance of 34' and the eastern edge of the road was at the distance of 23' from the place of the accident. The truck was standing at a distance of 5' from the place of the accident. This was the distance between the place of the accident and the rear right hand side wheel of the truck. The scooter was lying under the motor truck near rear right hand side wheel and scratch marks were visible on the road from the place of the accident till the place where the scooter was lying because of the scooter being dragged with the truck to that distance. The truck was lying at the distance of 5' from the place of the accident and distance between rear right hand wheel and the northern edge of the road was 10' and distance between the rear left hand wheel and the southern edge of the road was 3' and that between the front left wheel and the southern edge of the road was 1'. Now as the motor truck was proceeding from east to west his correct side would be southern side of the road. The scooterist was proceeding from the North to south and so his correct side would be east side of the road. According to the panchnama, exh. 80, the accident took place at the distance of 23' from eastern edge of the intersection and at the distance of almost 10' from the Northern edge of the road. Keeping in view the fact that the main road on which the petitioner was proceeding is 44' wide the accident took place almost in the middle of the road L.A. Mr. Bhatt has strenuously contended that the road on which the scooterist was proceeding is main road. Moreover, the scooterist was coming from right hand side of the truck driver and so it was the duty of the truck driver to allow the scooterist to pass before he could cross the intersection. No doubt this is the correct position of law but then the scooterist should have entered the intersection first. Though the petitioner, exhibit 30, has stated that he had entered the intersection first and at that time he had noticed the motor truck coming from his left side at the distance of 50 to 60' and though he has also stated that the front right hand side of the truck dashed the scooter this story is not believable. Place of the accident suggests that the scooterist was

driving the scooter not on his correct side, that is, the eastern side of the road but at the relevant time he was driving it in the middle of the road. This might have been necessary either because the municipal bus was standing near the intersection and the petitioner overtook the bus as stated by the driver at exhibit 77. If that would have been so then the petitioner would naturally be in the middle of the road. Second possibility would be that the petitioner might have seen the motor truck near to him as soon as he entered the intersection and he might have driven towards the west to overtake the truck but the fact remains that the scooterist was in the middle of the road when the accident took place. Now as per the panchnama he had travelled only 10' towards south after entering the intersection. The petitioner has contended that he was knocked down by the front wheel of the truck. The question was put to the driver, Exh. 77, to that effect but he has denied this suggestion. A question was also put to the truck driver that some scratch marks had been formed on the front right hand side wheel but he has denied that suggestion also. As per the panchnama Exh. 80 fresh scratch marks were formed on the rear right hand side wheel of the truck. As stated earlier, it has also been stated in the panchnama that the scooter was lying near the rear right handside wheel of the truck and the scratch mark was formed on the road from the place of the accident till right hand side wheel. This would suggest that the scooter dashed with rear right hand side wheel of the truck it that was so the right hand side wheel of the truck could reach at the place of the accident when the scooter dashed with it. L.A. Mr. Joshi has submitted that the motor truck was 26' in length. Even if we take the length of the bus at 20' then also, the front wheels of the truck had already crossed the intersection and rear wheels had travelled by about 23' from the eastern edge of the intersection. So the front wheels motor truck had almost crossed the intersection and at the relevant time rear wheels were in the middle of the road. If that was so then naturally the truck had entered the intersection earlier than the scooterist. The scooterist was proceeding from north to south and as far as he was concerned, the intersection was 30' wide and he had crossed about 10'. While the truck was

coming from east to west and he had to cross 44' and the front wheels had almost crossed the entire length. So the argument that the truck driver should have allowed the scooterist to pass first does not hold good in so far as the truck driver had already entered the intersection, had started crossing it and had almost covered considerable length of the intersection when the scooterist entered the intersection. In that case, it was the duty of the scooterist to stop the scooter and allow the motor truck to pass first. The fact that the scooterist dashed with the rear wheel of the truck would suggest that he was driving the scooter in full speed and otherwise he could have stopped the scooter on seeing the motor truck crossing the intersection and blocking his passage. As per the panchanama the truck was standing just near the place of the accident and rear right hand side wheel was at the distance of only 5' from the place of the accident and the scooterist was also dragged with the truck that must distance from the place of the accident. This would suggest that the truck was being driven in very slow speed otherwise it could not have been brought to a halt within the distance of only 5'. If the truck was dashed by the front right hand side wheel as contended by the petitioner then either the scooterist would have been thrown away from the truck and in that case it would not have been dragged on the road and would not have caused scratch mark on the road and would not have been lying near the rear right hand side wheel. The second possibility would be that the scooter might have fallen on the inner side of the truck and in that case either it would have been run over by the front wheel or would have been dragged along with front wheel. In that case scratch mark by the scooter would have been formed from the place of the accident till the front wheel and the scooter would have been lying near the right front side wheel. So it is not possible to accept the contention of the petitioner that his scooter was dashed by the front side of the truck. Considering all these circumstances and oral evidence and documentary evidence, it is very clear that the accident took place because the petitioner was driving the scooter in rash and negligent manner and it was not caused because of any rashness and/or negligence on the part of the truck driver. L.A. Mr. Bhatt has submitted

that the truck driver should at least be held liable for contributory negligence. According to L.A. Mr. Bhatt, the truck driver must have slowed down as soon as he saw the scooterist. This argument is also not valid. It is the contention of the truck driver that the municipal bus was standing near the intersection and he gave a signal to the bus to wait and allow his truck to pass. Now if the bus was standing then the truck driver would not have seen the scooter driver coming from behind the bus by overtaking the bus. Even if the bus was not standing considering the fact that front wheel of the motor truck had almost covered the entire length of the intersection before the accident took place, the scooterist would obviously have seen the truck crossing the road before he entered the intersection so the question of motor truck driver stopping his truck does not arise at all. The petitioner has stated, in his deposition at exhibit 30 that when he entered the intersection, he had seen the motor truck coming from his left side from the panchsheel society side but it was at the distance of about 50 to 60' and that he thought that he would be able to cross the road before the said motor truck would reach the intersection as discussed earlier, he only had to cross 30' and as per the panchnama exh. 80, the accident took place only after he crossed about 10'. In that case it would not have been possible for the truck driver to have crossed 60' and dashed the scooter and assuming for the sake of argument that the motor truck was rushing in an enormous speed, though this fact is not borne out by the evidence on record, then also any prudent man in the place of the petitioner would have stopped the scooter and would not have taken the risk of crossing the path of the truck. There is nothing on record to suggest that the motor truck driver was negligent in any manner whatsoever and that he had contributed in causing of the accident."

5. From the aforesaid discussion of the position of the truck and the scooter, the truck marks and the damage found on the portion of each vehicle, the Tribunal has found that there was total negligence on the part of the scooterist and not on the part of the driver of the truck. To base the finding on the panchnama and on the width of the road only, irrespective of the fact as to whether which will have the first right to go and

secondly which vehicle should not have been permitted to pass first in point of time, the Tribunal has even resorted to guess work or conjectures where it has stated that the claimant might have seen the motor truck near to him as soon as he entered the intersection and he might have driven towards the west to overtake the truck. But, the fact remains that the scooterist was in the middle of the road and the accident took place.

6. The resort to the conjectures and surmises by use of language "might have" is not permissible and the liability of the driver of the heavy vehicle is not just denied by a reference to such impermissible conjectures which are simply based on the width of the road and on the panchanama which is ordinarily prepared much after the occurrence of the accident. In fact, when a lighter vehicle enters the intersection, a heavier vehicle also enters or has already entered the intersection, a greater responsibility shall have to be caused on the driver of the heavier vehicle so as to slow down the vehicle to very slow speed and so as to see that a lighter vehicle either entering the intersection or which has entered the intersection is not dashed by any part of the heavier vehicle. In my opinion, too hyper technical view is taken by the Tribunal based on the panchnama and based on the width of the road and wheel marks which are found in the panchnama. The claimant is the living injured person who has definitely undergone pain, shock and suffering, expense for medical treatment and has been hospitalised twice for the fracture which he has received. Any accident of this nature, a positive and affirmative approach shall have to be taken by the Tribunal to extend its helping hand at least to the extent of seeing that a living injured who has been put to partial permanent disability is not sent back home without a penny especially when the defences which are taken by the Insurance Company are not the statutory defences available to the Insurance Company. The Insurance Company which has insured the vehicle should not be permitted to escape the liability based on the reading of panchnama and the finding of wheel marks and the placement of the two vehicles at the time when the panchnama was prepared. In my opinion, the judgment and award of the Tribunal, even if some contributory negligence is to be attributed to the scooterist, is not sustainable in law especially when it has based its finding on conjectures, surmises and impermissible guess work. In my opinion, the award which the Tribunal has passed, in case its finding on sole negligence of the scooterist is not accepted, is a just award, which should meet the ends of justice and this court would uphold the

award of Rs.35,000/- to the injured claimant with interest of 9 per cent only from the date the appeal is preferred in this court.

7. In the result, the judgment and award passed by the Tribunal is quashed and set aside and the Appeal is partly allowed and the award is substituted by the amount aforesaid.

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